No. ~~[illegible]~~ 14

In the Supreme Court of the United States

OCTOBER TERM, ~~1950~~ 51

UNITED STATES OF AMERICA, PETITIONER

v.

ROBERT FORTIER, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Miscellaneous:

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No. 602

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v.

ROBERT FORTIER, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the First Circuit entered in the above-entitled case on December 12, 1950.

OPINIONS BELOW

The opinion of the District Court for the District of New Hampshire (R. 12) is reported at 89 F. Supp. 708. The opinion of the Court of Appeals for the First Circuit (R. 67) is reported at 185 F. 2d 608.

JURISDICTION

The judgment of the Court of Appeals for the First Circuit was entered on December 12, 1950

(R. 72). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether Section 1 (a) of the Housing and Rent Act of 1947, approved June 30, 1947, in repealing the Veterans' Emergency Housing Act of 1946, made unenforceable maximum sales prices and construction requirements, imposed under the authority of the latter Act prior to its repeal, on houses in construction prior to June 30, 1947, but not sold until December 1947.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the Veterans Emergency Housing Act of 1946 (60 Stat. 207, 50 U. S. C. App. § 1821 *et seq.*), of Section 1 (a) of the Housing and Rent Act of 1947 (61 Stat. 193, 50 U. S. C. App. (Supp. I) § 1881), of the Act of March 22, 1944 (58 Stat. 118, 1 U. S. C. (Supp. I) § 109) and of Priorities Regulation No. 33 of the Civilian Production Administration (11 F. R. 6598) are set forth in the Appendix, *infra*, pp. 14–22.

STATEMENT

The Veterans Emergency Housing Act of May 22, 1946 (60 Stat. 207, 50 U. S. C. App. § 1821, *et seq.*), authorized the Housing Expediter, among other things, to establish priorities for materials in short supply which were needed in the construction of housing accommodations (Section 4 (a)), and to set maximum sales prices for

houses completed after May 22, 1946 (Section 3 (a)). Section 1 (b) provided that the Act, and regulations and orders issued thereunder, were to terminate on December 31, 1947, or on the date fixed by concurrent resolution of both Houses of Congress, whichever date was the earlier. By Section 5 of the Act it was made unlawful to sell or agree to sell a housing accommodation at a price in excess of that established by the Housing Expediter, or to violate the terms of any order or regulation issued under the Act. Section 5 further provided that:

> Notwithstanding any termination of this Act as contemplated in section 1 (b) hereinabove, the provisions of this Act, and of all regulations and orders issued thereunder, shall be treated as remaining in force, as to rights or liabilities incurred or offenses committed prior to such termination date, for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

Section 7 contained various provisions for criminal and civil enforcement.

Priorities Regulation No. 33 of the Civilian Production Administration (11 F. R. 6598) prescribed the procedures by which construction authorization and priorities assistance could be obtained under the Veterans Emergency Housing Program. It provided that houses must be built according to the specifications submitted with

the application for construction authorization, and that the maximum sales price, which was to be set at the time the application was approved, must be observed "so long as this regulation remains in effect." It provided further that changes in specifications could be made if approved by the agency which approved the original application and that at any time prior to the passing of title an increase in the sales price could be requested of and approved by the Federal Housing Administration if the builder could show increased construction costs over which he had no control. Regulation No. 33 was adopted as his own regulation by the Housing Expediter on March 31, 1947 (12 F. R. 2111). It was revoked on December 31, 1947. (13 F. R. 6.)

Section 1 (a) of the Housing and Rent Act of 1947 (61 Stat. 193, 50 U. S. C. App. (Supp. I) § 1881), which was approved and became effective on June 30, 1947, repealed Sections 1, 2b through 9, 11 and 12 of the Veterans Emergency Housing Act of 1946, but provided:

> That any allocations made or committed, or priorities granted for the delivery, of any housing materials or facilities under any regulation or order issued under the authority contained in said Act, and before the date of enactment of this Act, with respect to veterans of World War II, their immediate families, and others, shall remain in full force and effect.

On August 21, 1946, respondents, doing business under the name Modern Building Company, applied to the Federal Housing Administration for construction authorization and priorities assistance under Priorities Regulation No. 33 for the building of two single family dwelling units at Derry, New Hampshire (R. 19). In accordance with Priorities Regulation No. 33, respondents filed, as part of their application, blueprints and outline specifications of the proposed buildings (R. 19) and agreed, in the event the application was approved, to observe the maximum sales price to be set by the Federal Housing Administration. On September 9, 1946, the Federal Housing Administration approved the application, thereby authorizing construction of the units, and set a ceiling price of $8,350 on each unit (R. 19–20). The project was assigned an HH priorities rating to enable the builders to obtain certain building materials specified in Schedule A to Priorities Regulation No. 33 (R. 20).[1]

In building the houses, respondents used their priorities ratings to obtain at least some of the materials needed for construction (R. 29–36). One of the houses, completed in August 1947, was sold in December 1947, for $12,000 (R. 20). The other, although not completed until January 1948, was sold in November 1947, for $12,800 (R. 20).

[1] There is no question but that the applications were made and priorities received under the authority of the Veterans Emergency Housing Act of 1946.

Neither house was built entirely in accordance with the specifications submitted as part of the application and approved by the Federal Housing Administration. Respondents had not requested or been given permission to depart from the specifications or to sell at a price in excess of the ceiling.

The United States brought suit, pursuant to Sections 7 (a) and (c) of the Veterans Emergency Housing Act, to compel respondents to make restitution, to the purchasers of the two houses, of the overcharges and the value of construction omissions. After trial, the District Court entered judgment for respondents (R. 17), holding that since the sales took place after the repeal of the Veterans Emergency Housing Act by Section 1 (a) of the Housing and Rent Act of 1947, they could not be violations of that Act or of Priorities Regulation No. 33. The Court of Appeals for the First Circuit affirmed (R. 67–72).

REASONS FOR GRANTING THE WRIT

1. The judgment below should be reviewed because the court below has erroneously interpreted the Veterans Emergency Housing Act of 1946 and the Housing and Rent Act of 1947 in an area in which a decision by this Court is needed. The decision of the court below is in conflict with decisions of district courts in three other circuits, *Nesseth* v. *Creedon,* 80 F. Supp. 269 (D. Minn.); *Rheinberger* v. *Reiling,* 89 F. Supp. 598 (D.

Minn.); *Pruitt* v. *Litman,* 89 F. Supp. 705 (E. D. Pa.); *Katz* v. *Litman,* 89 F. Supp. 706 (E. D. Pa.); *United States* v. *Austin* (Civil No. 4368, D. Md., decided January 24, 1951), and is, at least, inconsistent with the rationale of the decision of the Court of Appeals for the Fifth Circuit in *United States* v. *Carter,* 171 F. 2d 530, and the result of *Heinicke* v. *Parr,* 168 F. 2d 194, in the Court of Appeals for the Sixth Circuit, involving the same statutes. There are about one hundred and fifty suits by the United States involving claims of some 1700 veterans, as well as an undetermined number of suits by veterans on their own behalf, pending in other courts in which the question decided by the court below is at issue. In addition, the Housing Expediter's Office is processing the claims of about two hundred veterans and expects that numerous other suits will be brought. Resolution of the problem by this Court is therefore most appropriate at this time.

2. In repealing the Veterans Emergency Housing Act of 1946, the Housing and Rent Act of 1947 provided "that any allocations made or committed, or priorities granted * * * under any regulation or order issued under the authority contained in said Act, and before the date of enactment of this Act, with respect to veterans of World War II, their immediate families, and others, shall remain in full force and effect." *Infra,* p. 19. The court below held

that proviso did not "aptly express an intention by Congress to keep in effect the maximum selling price restrictions of Priorities Regulation 33, as applied to *future* sales of houses built under residential construction permits approved prior to June 30, 1947" (R. 70). We submit that the court's interpretation was too narrow and that the proviso is much more properly interpreted to preserve to veterans all benefits conferred by the 1946 Act on houses construction of which was started before June 30, 1947, with the aid of construction authorization and priorities assistance. Cf. *Nesseth* v. *Creedon, supra.* Maximum sales prices were an integral part of the priorities program, and are included in the "priorities" which are preserved "in full force and effect." If Congress intended by preserving outstanding priorities to ensure that houses started under the Veterans Emergency Housing program should be completed for veterans, it must also have intended that the houses be sold at prices veterans could afford to pay. Congress was primarily interested in the veteran-purchaser, and it is difficult to believe that it desired to keep alive the builder's rights under the priority but to remove his concomitant obligation to the veterans which had always been considered an indivisible part of the grant of a priority.

Moreover, under the provisions of the Act of March 22, 1944 (58 Stat. 118, 1 U. S. C. (Supp I)

§ 109) (*infra*, pp. 19–20), the repeal of a statute does not have the effect of releasing or extinguishing "any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide." The court below agreed that Section 1 (a) of the 1947 Housing and Rent Act did not accomplish a repeal of any liabilities incurred under the Veterans Emergency Housing Act but held that no "liability" could be incurred until the sales were consummated, which was not until after the Act was repealed. We believe that, again, the court has interpreted "liability" too narrowly and that respondents were under a legally enforceable liability not to make overcharges at the time the repealing Act was passed. The relationship between the Government and respondents was not, we presume, contractual in the technical sense. It was, however, very like that between contracting parties. Cf. *Keele* v. *United States*, 178 F. 2d 766 (C. A. 5); *United States* v. *Tyler Corp.*, 90 F. Supp. 395 (E. D. Va.); *United States* v. *Duke Building Corp.*, 79 F. Supp. 681 (S. D. Fla.). Respondents could not have built any houses nor obtained materials in short supply had not the Government authorized the construction and given priorities assistance. As part of the consideration to the Government, respondents agreed that they would not sell at a price above the maximum price set at the time the application was approved, or

Maximum prices were "set" only in the sense that, as part of his application for priorities assistance and construction authorization, the builder himself, proposed maximum prices for approval along with construction specifications and an agreement to give preference to veterans. It was made clear by the regulations that maintenance of these undertakings, including the approved maximum price, was an integral part of the award of a priority rating and the grant of authority to construct.

Moreover, the maximum price requirement was not an independent or extraneous condition appended to the grant of priorities assistance and construction authorization in order to attain some end unrelated to the purpose for which Congress gave the Expediter his priorities-and-allocations powers. Rather, the price restriction was directly related to each of the three general aims Congress declared, in Section 4 of the 1946 Act, that it sought to reach through use of the priorities-and-allocations powers:—(i) conservation of scarce materials, (ii) the making available of moderately priced houses, and (iii) protection for the returning veteran. Thus, the price requirement was integral to the grant of the priority in substance and not only in form.

When, therefore, in Section 1(a) of the 1947 Act Congress preserved "allocations made" and "priorities granted" under the authority of the 1946 Act, it must have intended to preserve the builder's

obligation to maintain the maximum prices and construction requirements on houses built with the aid of those allocations and priorities. There is no indication that it sought to benefit the builder but to release him from his concomitant obligation to the Government and the veteran. On the contrary, the legislative history on the point, though sparse, contains explicit and authoritative recognition that the builder's obligation was preserved by Section 1(a) of the repealing act.

B. The contemporaneous interpretation of Section 1(a) of the 1947 Act by the Housing Expediter, to which he has since consistently adhered, was that maximum sales prices and construction requirements on houses built with the aid of construction authorization or priorities assistance and sold after June 30, 1947 and before December 31, 1947 (when all maximum sales price restrictions were lifted), could be enforced. His interpretation was made known to Congress on several occasions and was not questioned. That interpretation by the agency to which the administration of the Act was intrusted is entitled to great weight in determining the intent of Congress, and is especially significant in view of the fact that Congress, knowing the Housing Expediter's interpretation, has subsequently amended the Housing and Rent Act several times but has left Section 1(a) undisturbed.

C. Even if the interpretation of the court below were more strongly supported by the language and history of Section 1(a) of the 1947 Act, the conclu-

sion that respondents could escape liability for overcharges would be prohibited under the terms of 1 U. S. C., Section 109—the general savings clause. That section provides that, unless the repealing Act expressly so provides, the repeal of a statute shall not release any "liability" incurred under such statute, and the statute must be treated as remaining in force for the purpose of sustaining a proper action for the "enforcement" of the "liability". Whether or not respondents are technically in a contractual relationship with the Government, they were clearly under a fixed obligation—a "liability"—not to make overcharges, which obligation, but for the repealing Act, would clearly have been enforceable against them. The general savings clause preserves that type of fixed obligation to perform a duty in the future, and authorizes enforcement of the obligation if the obligor fails to perform when the proper time comes.

II

Section 7(a) of the Veterans' Emergency Housing Act of 1946 authorized the Housing Expediter, whenever in his judgment "any person has engaged or is about to engage" in an act in violation of Section 5 thereof, to apply to the appropriate court for an injunction "or other order" to enforce compliance with the Act. It cannot be questioned, since the recent decision of this Court in *United States* v. *Moore*, 340 U. S. 616, applying a substantially identical provision of the Housing and

Rent Act, that the Expediter can sue under Section 7(a) for restitution of overcharges. It similarly cannot be doubted that the United States, as the real party in interest *vis a vis* the Housing Expediter, can sue in the place of its agent. Cf. *United States* v. *Allied Oil Corp.*, 341 U. S. 1, 5.

That Section 7(d) of the 1946 Act allowed buyers to sue for the amount of overcharges within one year cannot affect the right of the Government to protect its interest in enforcing the Act, nor does it preclude a suit for restitution by the United States before the expiration of one year from the date of sale.

ARGUMENT

The sole question raised by our petition is whether Section 1(a) of the Housing and Rent Act of 1947, in repealing the Veterans' Emergency Housing Act of 1946, relieved builders who had received construction authorization and priorities assistance under the 1946 Act from their obligation, voluntarily assumed, to sell houses in construction prior to the 1946 Act's repeal on June 30, 1947, and sold between that date and December 31, 1947 (when all maximum price requirements on sales of houses were lifted), at not more than the maximum prices which had previously been approved.[7] The answer largely depends, of course,

[7] Our argument is phrased, generally, in terms of the enforceability of maximum prices. What is said is, of course, equally applicable to the enforceability of construction requirements. The one must stand, or fall, with the other.

on the purpose of Congress in enacting the later Act. We contend that Congress, in preserving, by Section 1(a) of the 1947 Act, allocations and priorities granted under the authority of the 1946 Act, intended to preserve the maximum prices which were an integral part of the grant of allocations and of priorities assistance, and on which the grant was definitely conditioned. All the standard aids to legislative interpretation support that conclusion. In addition, it is our view that, even apart from Section 1(a) of the 1947 Act, the general savings clause now embodied in 1 U. S. Code 109 preserves in full force and effect the builder's obligation to maintain maximum prices. We submit, therefore, that the judgment below must be reversed.[8]

Respondents contended in both courts below, and may contend here, that the United States was not a proper party plaintiff to this suit. We set forth our answer to that contention in Point II.

I

The Housing and Rent Act of June 30, 1947, Preserved the Effectiveness of Maximum Sales Prices Established Prior to That Date as a Part of the Grant of Building Allocations and Priorities under the Veterans' Emergency Housing Act of 1946

[8] The decision below is in accord with the decision in the companion case of *United States* v. *Duvarney*, 185 F. 2d 612 (C.A. 1), now pending on petition for a writ of certiorari, No. 15, this Term, and with *Sedivy* v. *Superior Home Builders*, 188 F. 2d 729 (C.A. 7) (which relies on the decision of the court below in the instant case); petition for a writ of certiorari pending, No. 207, this Term, and *United States* v. *C. B. S.*

A. *The language and legislative history of Section 1(a) of the 1947 Act.*

If the Veterans' Emergency Housing Act of 1946 had not been repealed and had been allowed to run its full course until December 31, 1947 (as provided in Section 1(b) of the 1946 Act, *supra*, p. 5, *infra*, pp. 50-51), there is no doubt that respondents would have been required, in the two sales involved here, to abide by the maximum sales prices which had been established as a part and condition of the grant to them, in September 1946, of a construction authorization and priorities assistance.[9] Did the repeal, on June 30, 1947, of the Veterans' Emergency Housing Act of 1946 make any difference? Congress, in repealing the 1946 Act by Section 1(a) of the Housing and Rent Act of June 30, 1947, specifically pro-

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Construction Co., 93 F. Supp. 664 (S.D. Fla.) (which relies on the District Court's opinion in the instant case), now pending on appeal to the Court of Appeals for the Fifth Circuit.

Supporting the Government's view are *Nesseth* v. *Creedon*, 80 F. Supp. 269 (D. Minn.); *Rheinberger* v. *Reiling*, 89 F. Supp. 598 (D. Minn.), appeal dismissed on stipulation, 185 F. 2d 406 (C.A. 8); *Pruitt* v. *Litman*, 89 F. Supp. 705 (E.D. Pa.); *Katz* v. *Litman*, 89 F. Supp. 706 (E.D. Pa.); *United States* v. *Austin*, Civil No. 4368, D. Md., decided January 24, 1951. The Government's view is also supported by the rationale of *United States* v. *Carter*, 171 F. 2d 530 (C.A. 5), and at least the result in *Heinicke* v. *Parr*, 168 F. 2d 194 (C.A. 6) and *United States* v. *Tyler Corp.*, 90 F. Supp. 395 (E.D. Va.).

[9] Unless Priorities Regulation No. 33, which provided that the restriction on sales prices "must be observed so long as this regulation remains in effect" (sec. 944.54 (g), *infra*, p. 59), had been withdrawn before the sales were consummated. In fact, the regulation remained in effect at all times until it was revoked on December 31, 1947. See *supra*, p. 7.

vided "that any allocations made or committed, or priorities granted for the delivery, of any housing materials or facilities under any regulation or order issued under the authority contained in said Act, and before the date of enactment of this Act, with respect to veterans of World War II, their immediate families, and others, shall remain in full force and effect." *Supra*, p. 7; *infra*, p. 56. The court below held that that proviso did not "aptly express an intention by Congress to keep in effect the maximum selling price restrictions of Priorities Regulation 33, as applied to *future* sales of houses built under residential construction permits approved prior to June 30, 1947" (R. 56-57; italics in original). In our view, however, the correct interpretation of Section 1(a) of the 1947 Act is that Congress did intend, in preserving allocations and priorities granted under the Veterans' Emergency Housing Act, to keep alive the maximum prices which were a part of the authorizations to build and of the grant of priorities assistance.

1. It is, at the outset, essential to observe that the maximum prices imposed by the Housing Expediter were imposed under Section 4 (*infra*, pp. 53-54) of the Veterans' Emergency Housing Act of 1946 rather than under Section 3 (*infra*, pp. 52-53). Although Section 3 of the Act authorized the Housing Expediter to establish maximum sales prices for housing accommodations completed after the

effective date of that Act, whenever in his judgment the sales prices of such housing "have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act," that authority was never exercised.[10] Instead, maximum prices on houses constructed under the Veterans' Emergency Housing Program were imposed, under the authority of Section 4 of the Act, as a part of, and condition to, the grant of authorization-to-construct and of priorities assistance.

As we have pointed out in the Statement, the Veterans' Housing Program, as carried out under the Veterans' Emergency Housing Act of 1946, was in largest part simply a continuation of the same program as it had been begun and carried on under the general authority of Title III of the Second War Powers Act (the wartime priorities-and-allocations statute). See *supra*, pp. 2-7. The latter Act did not contain the equivalent of Section 3 of the 1946 Act, and use was made of the allocations and priorities powers of Title III to establish ceiling prices. Maximum prices, suggested by the builder, were made a condition and part of the award of allocations and priorities assistance. Prior to the institution of the Veterans' Housing Program under Title III, such

[10] In Priorities Order No. 1 of August 27, 1946 (11 F.R. 9507), the Housing Expediter made a finding that sales prices of housing accommodations had risen and threatened to rise in a manner inconsistent with the purposes of the Act; however, he never followed up that finding by establishing selling prices for housing accommodations generally.

"setting" of maximum prices had formed a part and condition of the grant of certain wartime priorities and allocations under that Title, and the requirement had been upheld as within the statute's allocations and priority authority, "for they [the maximum prices] made it certain that any building, even though not directly connected with the production of munitions, should be cheap; and that pro tanto limited the drain upon the total stock of available materials." See *United States* v. *Elade Realty Corp.*, 157 F. 2d 979, 980-981 (C.A. 2) (affirming 66 F. Supp. 630 (E.D. N.Y.)), certiorari denied, 329 U.S. 810; *K. & J. Markets, Inc.* v. *Bowles*, 57 F. Supp. 294, 296-7 (D.N.J.), affirmed on opinion below, 148 F. 2d 661 (C.A. 3); cf. *United States* v. *Ashley Bread Co.*, 59 F. Supp. 671 (S.D. W .Va.); *United States* v. *Eureka Investment Co.*, 66 F. Supp. 637 (D. Ariz.), *United States* v. *Molnar*, 66 F. Supp. 180 (N.D. Ohio); *Nesseth* v. *Creedon*, 80 F. Supp. 269, 273 (D. Minn.).

When the 1946 Act was adopted, the same practice was followed and the same type of allocations-and-priorities authority was utilized. Section 4(a) (*infra*, p. 53) expressly gave the Housing Expediter power to allocate and establish priorities for the use of scarce materials "upon such conditions, and to such extent as he deems necessary and appropriate in the public interest and to effectuate the purposes of this Act." In addition to this broad standard, comparable to that set forth in Title III

of the Second War Powers Act (*infra*, pp. 56-57), Congress also made specific direction, in Section 4 (b) (*infra*, pp. 53-54), that in promulgating any regulation or order allocating or establishing priorities for the delivery of any scarce materials "the Expediter shall give special consideration" to "satisfying the housing requirements of veterans of World War II and their immediate families, * * * and * * * the general need for housing accommodations for sale or rent at moderate prices."[11]

It should also be noted that the Housing Expediter, and the agencies to which his functions were delegated, did not "set" maximum prices under Section 4; the builder set the price of the unit he proposed to build and sought the approval of the Housing Expediter for that construction. The Housing Expediter's function was then to approve or disapprove the construction of the house to be sold at that price. If the proposed construction was thought to be properly conservative of critical materials and the house was to be sold at a price which was "reasonably related to the pro-

[11] The difference between the kinds of authority to establish selling prices under Sections 3 and 4 is analogous to the difference between the authority of the former War Production Board to establish maximum prices as a part of, and a condition to, the allocation of scarce materials (see *supra*, pp. 19-20), and the power of the former Office of Price Administration to establish selling prices generally. In the first situation, only those people who avail themselves of the allocation or priorities assistance subject themselves to the imposition of maximum prices; in the latter situation, all producers of a given commodity are subject to the ceilings.

posed accommodations" (Sec. 944.54 (c) of Priorities Regulation No. 33, 11 F.R. 6599), the construction was approved. The price was a part and condition of the authorization to build and the grant of priorities assistance.[12]

This is plainly borne out by the terms of Regulation No. 33 which show that the maximum price requirement was an integral part of the grant of the priority. The Regulation opens by a general introduction stating (sec. 944.54 (a)(1), 11 F.R. 6598, *infra*, pp. 58-59) that it "provides priorities assistance to carry out the Veterans' Emergency Housing Program which calls for the construction of moderate and low-cost housing accommodations to meet the needs of returning veterans and members of the Armed Forces." It refers to the de-

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[12] The court below largely ignored the fact that permission to build, as well as priorities assistance, was conditioned on the agreement of the builder to observe the maximum price. Thus, the court stressed (R. 55) the statement of the Housing Expediter to Congress that priorities not used by March 31, 1947, became useless. Even were that statement accurate, it would not follow, as the court seemed to feel, that the builder thereby lost his *quid pro quo;* he still retained the benefit of his construction authorization. Cf. *Keele* v. *United States*, 178 F. 2d 766, 769 (C.A. 5).

In fact, however, priorities did not lose their value so early. On March 31, 1947, Schedule A to Priorities Regulation 33 was amended (12 F.R. 2118) to provide that priorities orders must be placed by April 15, 1947. The amendment specifically provided, however, that the time for placing such orders could be extended on the builder's application before June 1, 1947. The conditions for granting such an extension were only that the builder had been unable to find a supplier who would accept his order and fill it within a reasonable time. The time for placing orders could be extended to June 30, 1947, and priorities assistance was, therefore, legally available until that date.

tailed provisions for construction authorization and priorities assistance (the HH rating), and states that the regulation governs "the circumstances under which applications will be approved, the way in which the priorities assistance given under the regulation may be used, and the conditions which will be imposed on the builder and succeeding owners in selling or renting the accommodations * * *." Even more revealing of the fact that the price requirement was part and parcel of the priority are the terms of the certificate which the priority holder was required to place on his purchase order whenever he made use of his priority to secure materials (sec. 944.54 (d) (1), 11 F.R. 6600):

VETERANS' EMERGENCY HOUSING PROGRAM

Project Serial Number —

Rating: HH

I certify to the Civilian Production Administration that the materials covered by this order will be used only in a housing project being built under the Veterans' Emergency Housing Program at —— —— (give location of project), *and that I will comply with the limitations on sales prices or rents and the preference to veterans provided in Priorities Regulation 33 and my approved application.*

——— ———,

Builder [italics supplied]

Nor was it by mere chance or administrative fiat that priorities assistance and construction authorization were tied so directly to the maintenance of maximum prices. The Housing Expediter was not given blanket authority to direct the flow of critical materials in the construction industry. The mandate of Congress, as contained in Section 4, gave him three general standards for the exercise of his authority, insofar as residential housing was concerned.[13] The first was that scarce materials should be conserved; the second, that housing accommodations at moderate prices be made available; and the third, that the bulk of housing accommodations to be built should be available to veterans. The allocations and priorities program established by the Housing Expediter—and, in particular, the maximum sales price requirement—was responsive to all three parts of the Congressional mandate. In order that critical building materials should be conserved, construction authorization and priorities assistance were conditioned upon the agreement of the builder to build houses according to certain approved plans; unless the builder's specifications were deemed to be properly conservative of critical materials, construction was not to be authorized. In addition, the establishment of a maximum price was, in itself, an agent of conservation, since it necessarily tended to limit the use of materials—just as had

[13] These three general standards can be gathered from sections 4 (a), 4 (b), and 1 (a) of the Act. *Infra*, pp. 50, 53-54.

been the case with the maximum price requirements which formed part of the grant of priorities assistance under Title III of the Second War Powers Act. *Supra*, pp. 19-20. Secondly, construction authorization and priorities assistance was explicitly conditioned upon the promise of the builder to sell at a price which in the judgment of the Housing Expediter was moderate. Thirdly, the Congressional purpose to make housing available to veterans was fulfilled by the requirement that all housing built with the aid of priorities assistance, or after construction authorization, had to be offered for sale exclusively to veterans for a period of 60 days after completion of construction, and, again, by the maximum price requirement which was designed to give a reasonable opportunity to purchase to veterans, most of whom would have only moderate incomes for the period following their war service.

The maximum price requirement thus had a part in carrying out each of the three general purposes which Congress sought to accomplish by its grant of priorities and allocation powers in Section 4. It was not an independent or extraneous condition which was appended to the grant of the priority and the construction authorization in order to attain some beneficial end unrelated to the purposes for which Congress granted the Expediter his allocations and priorities powers. On the contrary, the price requirement functioned directly as

one device for fulfilling the very ends which Congress sought to attain through Section 4.[14]

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[14] At all times during the life of the maximum price requirements, there was available a procedure by which builders could apply, before passage of title, for an increase in the prices they had themselves set in their applications for priorities assistance and construction authorization. Section 944.54 (g) (7) of Priorities Regulation No. 33 (*infra*, pp. 60-61) contained provision for such applications and indicated that relief would be granted if the builder could show that he had incurred or would incur additional or increased costs in the construction over which he had no control, and that these increased or additional costs would make it impractical for him to sell at the price specified in his application for priorities assistance. This procedure was open to respondents (see R. 21-22, 31), but they did not avail themselves of it.

The Housing Expediter continued to impose maximum price restrictions as a condition to new construction authorization and priorities assistance until, after the expiration of the price controls generally, in October 1946, it was no longer feasible, in view of the removal of maximum prices on building materials. Increases in the prices of houses which continued to be governed by a maximum sales price were handled under the procedure described in the preceding paragraph of this footnote. On December 13, 1946, the Housing Expediter relaxed the overall $10,000 limitation on sales prices previously in effect (11 F.R. 14323). See *Nesseth* v. *Creedon*, 80 F. Supp. 269, 275 (D. Minn). This procedure for increasing prices to meet increased costs was continued in effect after the repeal of the Veteran's Emergency Housing Act of 1946, on June 30, 1947. See the *Nesseth* case, *supra, and infra*, p. 33.

On December 24, 1946, by Housing Permit Regulation No. 1 (frequently called the HPR), the Expediter eliminated selling price restrictions on all houses the construction of which was begun after that date, and as to which construction authorization and priorities assistance had not been secured under either Priorities Regulation No. 33 or Priorities Regulation No. 5 (fn. 5, *supra*, p. 6) (11 F.R. 14621). Such new construction under the Housing Permit Regulation was subject to quantitative restrictions on floor area, fixtures, etc.—as the means of conserving materials—but there was no maximum price requirement. Sec. 806.1(h). As stated, the Housing Permit Regulation did not directly apply to housing as to which construction authorization and priorities assistance had been secured under Regulation No. 33 or No. 5. However, the new Regulation did provide that a person

In sum, selling price restrictions were an integral part and condition of the allocations and priorities program and of the "allocations made" and "priorities granted" to respondents. This is shown, as we have pointed out, by (a) the genesis and history of the Veterans' Emergency Housing Program, which first made use of maximum price requirements under the priorities and allocations powers of Title III of the Second War Powers Act, and then continued by using the priorities and allocations powers of Section 4 of the Veterans' Emergency Housing Act of 1946; (b) the terms of Priorities Regulation No. 33, under which respondents received their priority and authorization, and (c) by the direct relationship of the price requirement to each of the three purposes Congress sought to attain through use of the priorities and allocations powers granted by Section 4 of the 1946 Act:—conservation of scarce materials, the making available of moderately priced houses, and protection of the veteran.[15]

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to whom a priority had been granted under either of those regulations, but who had not begun the construction of all the dwellings approved in his application, might elect to return his priority to the F.H.A. and to apply for a permit under the HPR for the construction of the dwellings on which construction had not begun. If a permit under the HPR were granted, the priority would be amended to conform to the new regulation, *i.e.*, the maximum sales price requirement would be deleted. Sec. 806.1(a). In short, the practical effect of the HPR was to permit the elimination of the selling price restriction on all houses begun after December 24, 1946.

[15] No question has been raised in this case concerning the constitutional validity of Section 4 or of the statutory powers

If, then, the selling price restriction was an integral part of the grant of the priority and authorization, when Congress declared in Section 1 (a) of the Housing and Rent Act of 1947 that all "allocations made" and "priorities granted" under the 1946 Act "shall remain in full force and effect", it must have intended to retain the price requirement in full force and effect. Indeed, as the Fifth Circuit has pointed out, it must have intended "to retain in full force and effect all orders, commitments, regulations, and remedies relating to veterans' housing which had accrued prior to the date of the 1947 Act." *United States* v. *Carter*, 171 F. 2d 530, 532 (C.A. 5). We cannot suppose that Congress kept outstanding allocations and priorities in effect to ensure that houses started under the Veterans' Emergency Housing Program be completed for veterans and yet did not intend

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of the agencies acting under that section to establish maximum price requirements as a part and condition of the grant of priorities. Constitutional validity is clear. Cf. *Steuart & Bro.* v. *Bowles*, 322 U.S. 398, 405; *Yakus* v. *United States*, 321 U.S. 414; *Woods* v. *Miller Co.*, 333 U.S. 138; *United States* v. *Elade Realty Corp.*, 157 F. 2d 979, 981 (C.A. 2), certiorari denied, 329 U.S. 810; *Gallagher's Steak House* v. *Bowles*, 142 F. 2d 530 (C.A. 2), certiorari denied, 322 U.S. 764; *Shreveport Engraving Co.* v. *United States*, 143 F. 2d 222 (C.A. 5), certiorari denied, 323 U.S. 749; *St. Regis Paper Co.* v. *United States*, 110 C. Cls. 271, 274, certiorari denied, 335 U.S. 815; *Oro Fino Consolidated Mines, Inc.* v. *United States*, 118 C. Cls. 18, certiorari denied, 341 U.S. 948.

There is likewise no doubt that, as a matter of statutory construction, maximum prices could validly form part of the allocations and priorities granted under Section 4. See the *Elade Realty* and other cases cited *supra*, pp. 19-20, and also the discussion in the text *supra*, pp. 20-27. Cf. *United States* v. *Schroeder*, 164 F. 2d 647 (C.A. 7).

to ensure that those houses be sold at prices veterans could normally afford to pay. Congress was primarily interested in the veteran-purchaser, and it is difficult to believe that it desired to keep alive the builder's rights under the priority and authorization but to remove his concomitant obligation to the Government and the veteran which was an indivisible part of the grant of a priority and of construction authorization. Moreover, by the time the 1947 Act became law—June 30, 1947—priorities were no longer of much value to builders (see footnote 12, *supra*, p. 22), and it is equally hard to believe that Congress would have made a special point of preserving priorities if it had only the builder's interest in mind.

2. The sole reference throwing any light on this question in the legislative history of the Housing and Rent Act of 1947 reinforces our conclusion.[16] On that occasion, the Chairman and another member of the House Committee considering the bill, and the Federal Housing Commissioner, all agreed that maximum prices on houses already in construction would be continued in effect.

In the hearings before the House Committee on

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[16] The legislative history of the 1947 Act includes the following materials: Hearings before the Committee on Banking and Currency, H. of Reps., 80th Cong., 1st Sess., on H.R. 2549 (entitled "Housing and Rent Control"); H. Rept. No. 317, 80th Cong., 1st Sess.; H. Rept. No. 591, 80th Cong., 1st Sess. (conference report); S. Rept. No. 86, 80th Cong., 1st Sess. (report on S. 1017, the Senate rent bill, which did not deal with allocations or priorities, but solely with rent control);

Banking and Currency on H. R. 2549,[16a] the following colloquy took place between Chairman Wolcott, Congressman Monroney, and Mr. Raymond Foley, then National Housing Administrator and formerly Federal Housing Commissioner, who administered Priorities Regulation No. 33 (Hearings, p. 226):[17]

> Mr. MONRONEY. One other question. Mr. Chairman, do you consider that this bill will take the ceilings off HH houses?
>
> The CHAIRMAN. There is a provision in the bill which protects the commitments, already made, up to the effective date of the act. It would not affect any commitments made after that date.
>
> Mr. MONRONEY. *In other words, the ceilings on houses built with HH priorities would be left as it is now,* which gives you the right,

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93 Cong. Rec. 4300-4332, 4391-4406, 4406-4417, 6128-6145, 6346, 7153-7166, 7290-1, 7297-7300. (The Senate Committee did not hold hearings on, or consider, the matter of priorities and allocations.)

[16a] H.R. 2549, introduced by Mr. Wolcott, contained language substantially identical with that of the proviso to Section 1(a) of the Housing and Rent Act of 1947. In H.R. 2549, the proviso read as follows:

> *Provided*, that any allocations made or committed, or priorities *established* for the delivery of any housing materials or facilities under any regulation or order issued under the authority contained in said Act, and before the date of enactment of this Act, with respect to veterans of World War II, their immediate families, and others, shall remain in full force and effect. (Italics supplied) (See Hearings, *supra*, p. 1).

H.R. 3203, which became the Housing and Rent Act of 1947, was later substituted for H.R. 2549.

[17] The Housing Expediter had already reminded the Committee, in the course of his general presentation, that maximum sales price restrictions were generally in effect for housing granted priorities assistance. See Hearings, p. 40.

Mr. Foley, to adjust those ceilings up for increased costs of construction where the builders make a case that their construction costs have increased; is that right?

Mr. FOLEY. That has been our practice in the past, and as I understand, this refers to contracts entered into. I have assumed that that meant the agreement between the builder and the governmental agency that in return for priority aid certain rent ceilings would be applied, or certain sales ceilings would be applied.

The CHAIRMAN. *I might say for the record now that it is intended to cover any agreement or any commitment made by anyone, which was made under the Patman Act* [the Veterans Emergency Housing Act of 1946].

Mr. FOLEY. That would leave us then in the situation that you mention, Congressman Monroney.

Mr. MONRONEY. Well, you would feel that it would be not good for the Government or the veteran to take ceilings off these HH houses, that were built with this priority aid, and on which an agreement had been made by the builder to sell at a ceiling price, as fixed by the Federal Housing Administration on adjustment; is that right?

Mr. FOLEY. Our position in maintaining that control, when the changes were made in the latter part of last year, was on that basis, that it was an agreement under which certain benefits were supposed to flow both ways and should be maintained. [Italics supplied.]

While it is true that the understanding of Messrs. Wolcott, Monroney and Foley is not decisive of the question of Congressional intent, it is, we submit, rather good evidence of that intent, and should not have been dismissed by the court below as "obscure and inconclusive." (R. 57). The Chairman of the Committee, who was also the sponsor of the bill and a leading proponent of the repeal of the Patman Act, expressly agreed with a ranking member of the minority party on the Committee and with the Federal Housing Commissioner, charged with overseeing the maximum price requirements, that such price commitments continued in effect after repeal of the 1946 Act.

B. *Administrative interpretation and subsequent legislative treatment of Section 1(a)*

On July 3, 1947, effective "simultaneously with the approval by the President of the Housing and Rent Act of 1947," the Housing Expediter amended Priorities Regulation No. 33 to reflect changes in the law necessitated by that Act (12 F.R. 4434).[18] The maximum price provisions were, however, left unchanged. On December 5, 1947, Priorities Regulation No. 33 was again amended to provide that maximum prices would thereafter apply only to first sales and subsequent sales would no longer be

[18] The amendment provided that the veterans' preference requirements of the regulation would no longer apply to houses completed after June 30, 1947. Instead, veterans' preference on such houses would be governed by other regulations issued pursuant to the Housing and Rent Act of 1947 (12 F.R. 4265).

subject to regulation (12 F.R. 8205).[19] Priorities Regulation 33 was finally revoked on December 31, 1947, the date on which all regulations under the authority of the Veterans' Emergency Housing Act of 1946 were to expire by the terms of Section 1(b) of that Act. *Infra*, pp. 50-51. At all times during the period from June 30, 1947 to December 31, 1947, the Housing Expediter interpreted the Housing and Rent Act of 1947 as not affecting the obligation of builders who had secured priorities assistance and construction authorization to maintain maximum prices on housing the construction of which had begun before the effective date of the 1947 Act. And the Federal Housing Administration continued to process applications for increases in these maximum prices. See footnote 14, *supra*, p. 26, and *Nesseth* v. *Creedon*, 80 F. Supp. 269 (D. Minn.).[20]

In reaching its decision, the court below ignored that interpretation of Section 1(a) by the Housing Expediter and the Federal Housing Administration. The failure of the court below to give any weight to that interpretation is in conflict with a long line of decisions by this Court that adminis-

[19] Priorities Regulation No. 33 had previously provided that increases in the maximum prices could be requested by a subsequent owner if that owner had made improvements in the house (Section 944.54(g)).

[20] The building trade generally seems to have accepted the interpretation of the Housing Expediter. Numerous applications for increases in the previously approved maximum prices were submitted to and processed by the Federal Housing Administration in the period July 1 to December 31, 1947.

trative interpretations by an agency charged with the administration and enforcement of an act are entitled to great weight in any attempt to divine congressional intent. *Norwegian Nitrogen Co.* v. *United States,* 288 U.S. 294, 315; *United States* v. *American Trucking Associations,* 310 U.S. 534, 549; *Billings* v. *Truesdell,* 321 U.S. 542, 552.

The interpretation of the Housing Expediter is of even greater weight in this instance since it was subsequently, on more than one occasion, made known to Congress and was not questioned. *United Labor Committee* v. *Woods,* 175 F. 2d 967 (E.C.A.). Cf. *Helvering* v. *Winmill,* 305 U.S. 79; *United States* v. *Dakota-Montana Oil Co.,* 288 U.S. 459, 466. In the course of the Hearings before the House Committee on Banking and Currency on the 1948 extension of rent controls, the Housing Expediter testified (pp. 23-24):

> Section 1(a) [of the 1947 Act] also contains saving provisions which continued in effect allocations made or priorities granted prior to July 1, 1947, and which preserved funds that had been committed prior to that date under Public Law 388, Seventy-ninth Congress. Under these saving provisions, the Office of the Housing Expediter has been performing the following functions:
>
> (a) *The administration and enforcement of allocations made and priorities issued prior to June 30, 1947.* These include veterans' preference on housing completed with priorities assistance prior to June 30, 1947; *maximum*

sale prices on priority assisted housing; certificates and directives with respect to Government surplus property; and the requirement that critical materials obtained with priorities assistance continue to be used for the purposes for which assistance had been extended. All of these have terminated as of December 31, 1947.

There remain, however, a large number of cases involving violations which occurred on or before December 31, 1947, with respect to veterans' preference and *maximum sales prices,* particularly the construction and sale of housing units which were of shoddy construction far below specifications in connection with which priorities assistance had been extended. Since the savings provisions of section 1(a) provide legislative authority for enforcement proceedings in such cases, I recommend that they be extended. [Italics added.]

The failure of Congress to question the Housing Expediter's interpretation on this occasion is especially significant, since Representative Wolcott, the author of Section 1(a) of the 1947 Act, presided at this session of the Committee. Substantially the same testimony was given by the Housing Expediter before a Subcommittee of the Senate Banking and Currency Committee considering the 1948 extension of Rent Control,[21] and

[21] Hearings before a Subcommittee of the Senate Banking and Currency Committee on Bills pertaining to the Extension of Rent Control, 80th Cong., 2d Sess., p. 536.

again his interpretation of Section 1(a) was not questioned. Indeed, the interpretation of the Housing Expediter seems to have been adopted by Senator Cain, the Chairman of the Senate Committee and author of the 1948 Act, who, in the course of the debate on the 1948 Act, in explaining Section 1(a) of the 1947 Act, stated (94 Cong. Rec. 1457, 80th Cong., 2d Sess.):

> Section 1(a) deals with liquidating functions concerning *enforcement of* veterans' preference and *maximum sales prices of houses,* premium payments for scarce building materials, and market-guaranty agreements for the manufacture of houses. As requested by the Acting Housing Expediter, these functions are not eliminated. They are continued in the Housing Expediter * * *, by omitting mention of them in the bill. [Italics supplied.]

Again, in 1949, in the Hearings before the House Committee on Banking and Currency on the 1949 extension of rent control, the Housing Expediter stated (p. 47):

> I should like to report on our activity in connection with violations of the Veterans' Emergency Housing Act. These violations include *overceiling sales,* shoddy construction, and failure to construct according to plans and specifications. *Although that act itself expired December 31, 1947, specific appropriation was made last year for the continuing investigation of complaints and prosecution of violations.*

> As of January 5, 1949, we have received complaints involving over 200,000 units. In more than 100,000 of these units no action could be taken on the complaint *because the alleged violation had occurred after the expiration of the act.* [Italics supplied.] [22]

In the face of these numerous disclosures of his interpretation by the Housing Expediter, Congress, although it has drastically amended many other sections of the Housing and Rent Act, has left Section 1(a) unchanged to date. In view of the continuous reenactment of the general rent control law, of which Section 1(a) has formed a part, Congress must be regarded as having ratified the interpretation of the Housing Expediter. *Woods* v. *Oak Park Chateau Corp.*, 179 F. 2d 611 (C.A. 7).

C. *The effect of 1 U.S. Code, Section 109—the general savings clause.*

Even though we are wrong as to Section 1(a) of the 1947 Act, and the *proviso* of that section be held not to continue the builder's obligation to sell at the ceiling price, we believe there is an alternative path to reach the same result. Quite apart from

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[22] In February 1949, the President transmitted a revised estimate of appropriation for the fiscal year 1949, involving an increase for the Housing Expediter. In partial justification of the increase, it was stated "that veterans' complaints pertaining to dwelling units purchased by them and which were constructed with priority assistance are continuing to be received in considerable volume making it necesssary to continue this program until at least June 30, 1949." H. Doc. No. 50, 81st Cong., 1st Sess., p. 2.

section 1(a) is the effect of the general savings clause.—Section 109 of Title 1 of the U.S. Code—which governs all repealers. Section 109 provides that the repeal of a statute does not have the effect of releasing or extinguishing "any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability." *Infra*, p. 57.

The court below agreed with petitioner that, by virtue of that provision, Section 1(a) of the Housing and Rent Act of 1947 did not accomplish a repeal of any "liabilities" incurred under the Veterans' Emergency Housing Act (R. 58).[23] The court held, however, that no "liability" could be incurred until a sale was consummated and, since the sales involved here did not occur until after the repeal of the 1946 Act, there was no "liability" incurred under that statute which could be preserved (R. 58). We submit that the court has construed "liability" too narrowly, and that respondents, at the time the repealing act was passed, were under a legally enforceable obligation—a "lia-

[23] The general savings clause is applicable notwithstanding the inclusion in the repealing act of a specific savings clause, unless where, perhaps, there is a direct conflict between the two clauses. *Great Northern Ry. Co.* v. *United States*, 208 U.S. 452, 465-466. As the court below held (R. 58), there is plainly no conflict between section 1 (a) of the 1947 Act and 1 U.S.C. 109.

bility"—not to sell above the maximum sales price so long as Priorities Regulation No. 33 remained in effect (*i.e.*, until December 31, 1947). This liability was preserved by 1 U.S.C. 109 from extinguishment on June 30, 1947, and continued in effect until the end of 1947. Upon respondents' violation of their obligation in November and December 1947, a proper action to enforce it could be brought under the pertinent enforcement provisions of the Veterans' Emergency Housing Act of 1946, which Section 109 kept in force and effect for that purpose.

1. Whether or not the relationship between the Government and respondents was contractual in the technical sense, it was certainly very like that between contracting parties. *Keele* v. *United States*, 178 F. 2d 766, 768-9 (C.A. 5); *United States* v. *Tyler Corp.*, 90 F. Supp. 395, 396-397 (E.D. Va.); *United States* v. *Duke Building Corp.*, 79 F. Supp. 681, 683 (S.D. Fla.); cf. *United States* v. *Elade Realty Corp.*, 157 F. 2d 979, 981 (C.A. 2), certiorari denied, 329 U.S. 810. Respondents could not have started construction on any houses in 1946 without authorization by the Housing Expediter, nor would materials in short supply have been available to them without the Housing Expediter's assistance. As a part of, and condition to, granting that authorization and assistance, the Government required that the houses, when constructed, be sold at a price which the average veteran could afford and which would tend to conserve

materials, and that the house, as built, conform to the specifications approved. As part of the "consideration" to the Government, respondents agreed to sell at the maximum price and construct according to specifications. The plans were drawn by the builder and the price set by the builder; if he felt that he could not operate within the limits imposed under the Veterans' Housing Program, he did not have to build. His application is proof of his belief that profitable operation within the program was possible. Upon undertaking to build, he came under an obligation, a liability, to observe the terms of his agreement. Were this an ordinary contract, there would be no question that the Government, having fully performed its part of the agreement, could force respondents to fulfill their obligations. Whether or not the relationship be characterized as contractual, it cannot be denied that respondents were under a liability, an obligation, to perform—an obligation which, but for the repealing Act, would have been enforceable against them.

That respondents could have modified their liability by securing a price increase on a showing of increased costs beyond their control (see pp. 26, 33, *supra*) does not weaken this argument. They did not apply for an increased price and their liability remained unchanged. They did not choose to modify it in the manner authorized by their undertaking. See *United States* v. *Duke Building Corp., supra.*

2. The term "liability" in Section 109 covers this type of fixed statutory-consensual obligation to perform a function or fulfill a duty at some definite future time. In common usage, "liability" certainly includes "obligation", and "obligation" imports future performance. Besides, "liability", as used in Section 109, has consistently had a broad construction, based upon its inherent purpose of maintaining equal treatment for all persons affected by a particular statute. *Hertz* v. *Woodman*, 218 U.S. 205; *Fleming* v. *Mohawk Wrecking & Lumber Co.*, 331 U.S. 111, 119; *Herman* v. *Woods*, 175 F. 2d 781, 786 (E.C.A.); *National Labor Relations Board* v. *National Garment Co.*, 166 F. 2d 233, 237 (C.A. 8), certiorari denied, 334 U.S. 845, and cases cited.

It is true that one prime purpose of the general savings clause is to prevent—in the absence of a deliberate legislative directive—the repeal of a statute from acting as a legislative pardon for then-existing actual *violations* of duties imposed by the repealed statute; the statute is continued in effect in order to permit redress of that existing breach of duty. But this is not all that Section 109 does, as the Court of Appeals seemed to think (R. 58). The section, and its predecessors, have not been construed as limited to cases where, at the time of repeal, the person concerned had already breached a duty flowing from the statute being repealed. These savings

acts have been applied to preserve "liabilities" where actual performance of the duty, though fixed by events occurring prior to repeal, was not called for until after the repeal. For instance, in *Hertz* v. *Woodman, supra,* the general savings clause was invoked to support collection of an inheritance tax from a taxpayer whose testator died prior to repeal of the inheritance tax statute, even though it was conceded that the tax was not due and payable until after repeal. And in *Herman* v. *Woods, supra,* the Emergency Court of Appeals read the term "liability", in a savings clause, as covering a landlord's contract with a tenant to make a future refund in the event certain circumstances occurred.

Similarly, prior to repeal of the Veterans' Emergency Housing Act of 1946, respondents came under a fixed obligation, under that Act, to offer for sale and sell the houses they were then building at the approved maximum prices, so long as Priorities Regulation No. 33 remained in effect. The obligation was definite and fixed, even though performance of the duty would necessarily have to occur in the future when the houses were ready to be sold. On repeal of the 1946 Act, Section 109 of Title 1 preserved this duty of future performance, just as, in the *Hertz* case, it preserved the taxpayer's duty to make future payment of the inheritance tax. In the words of Section 109, respondents' "liability" was not "released" or "extinguished"; the 1946

Act "shall be treated as still remaining in force for the purpose of sustaining any proper action * * * for the enforcement of such * * * liability." Certainly, what the United States seeks here is the *"enforcement"* of a *"liability"*.

If Section 109 is not read so as to preserve such statutory obligations calling for future performance, it will fulfill only part of its aim to keep on an equal plane all persons who have come under a definite obligation during the repealed statute's period of effectiveness.[24] In the case of housing built with priorities assistance and construction authorizations, it will mean that builders who sold before June 30, 1947, are held to the maximum price restrictions, while those, like respondents, who made sales after that date, are freed from the requirement—even though both sets of builders made the same undertaking, came under the same obligation, and received the same *quid pro quo*.[25]

In short, the language of the repeal provisions of the Housing and Rent Act of 1947 and all aids to its

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[24] This purpose is reflected in such decisions as *United States* v. *Kirby*, 176 F. 2d 101, 104 (C.A. 2), *Lovely* v. *United States*, 175 F. 2d 312, 316-318 (C.A. 4), certiorari denied, 338 U.S. 834, and *Hiatt* v. *Hilliard*, 180 F. 2d 453 (C.A. 5)—all holding applicable the sentence provisions contained in the repealed statutes, rather than those established by the new criminal code.

[25] Undoubtedly, the Congress which enacted the Veterans' Emergency Housing Act of 1946 did not intend such a discriminatory result. A proviso was inserted in Section 5 of that Act declaring that notwithstanding any termination of the Act, as contemplated in Section 1 (b) thereof, all of its pro-

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 14

UNITED STATES OF AMERICA, PETITIONER

v.

ROBERT FORTIER, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court for the District of New Hampshire (R. 9) is reported at 89 F. Supp. 708. The opinion of the Court of Appeals for the First Circuit (R. 54) is reported at 185 F. 2d 608.

JURISDICTION

The judgment of the Court of Appeals for the First Circuit was entered on December 12, 1950 (R. 59). The petition for a writ of certiorari was filed on March 12, 1951. Certiorari was granted

on May 7, 1951 (R. 59). The jurisdiction of this Court rests on 28 U. S. C. 1254(1).

QUESTION PRESENTED

Whether Section 1 (a) of the Housing and Rent Act of 1947 (approved June 30, 1947), in repealing the Veterans' Emergency Housing Act of 1946, made unenforceable maximum sales prices and construction requirements—established under the authority of the latter Act, prior to its repeal, as a part of and condition to the grant of priorities assistance and authority to construct—on houses in construction prior to June 30, 1947, but not sold until November and December 1947.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the Veterans' Emergency Housing Act of 1946 (60 Stat. 207, 50 U.S.C. App. § 1821 *et seq.*), of Section 1 (a) of the Housing and Rent Act of 1947 (61 Stat. 193, 50 U.S.C. App. (Supp. I) § 1881), of the Act of March 22, 1944 (58 Stat. 118, 1 U.S.C. (Supp. IV) § 109) and of Priorities Regulation No. 33 of the Civilian Production Administration, as amended June 14, 1946 (11 F. R. 6598), are set forth in the Appendix, *infra*, pp. 50-61.

STATEMENT

1. The Veterans' Emergency Housing Program was inaugurated early in 1946 by Veterans' Housing Program Order No. 1, issued on March 26, 1946 (11 F. R. 3190), in conjunction with Priorities Regulation No. 33, originally effective January 15,

1946 (10 F. R. 15301; 11 F. R. 601),[1] later amended April 12, 1946, and June 14, 1946 (11 F. R. 4085; 11 F. R. 6598). Both of these regulations were issued by the Civilian Production Administration (successor to the War Production Board) under the authority of Title III of the Second War Powers Act (56 Stat. 177, 50 U.S.C. (App.) 633, *infra*, pp. 56-57). The program called for the construction of an unprecedented number of moderate and low-cost housing accommodations to meet the need of returning veterans—a goal which was unattainable unless critical materials were diverted from other, less essential, construction. To that end, Veterans' Housing Program Order No. 1 forbade, generally, the beginning of all new construction without specific prior authorization by the Civilian Production Administration or its designated agents.[2] The restrictions of that Order applied whether or not the materials needed for construction were available without priorities.

By Priorities Regulation No. 33, as amended

[1] As originally promulgated on December 20, 1945 (effective January 15, 1946) (10 F. R. 15301), Priorities Regulation No. 33 established what it called the "Reconversion Housing Program". After the issuance of Veterans' Housing Program Order No. 1, the main program was the Veterans' Emergency Housing Program.

[2] In the case of non-farm housing accommodations, applications were to be filed with the local offices of the Federal Housing Administration; in the case of farm housing, applications were to be filed with the appropriate County Agricultural Conservation Committee. In the case of non-housing construction, the application was to be filed with the appropriate field office of the Civilian Production Administration.

April 12, 1946, and June 14, 1946 (11 F. R. 4085; 11 F. R. 6598), the Civilian Production Administration prescribed the procedures by which construction authorization and priorities assistance could be obtained under the Veterans' Emergency Housing Program. Under that regulation, a builder was required to submit, as part of his application for construction authorization and priorities assistance, the specifications for each unit to be built and a statement of the maximum price at which he proposed to sell each unit.[3] The application was not approved unless the submitted specifications and proposed price were acceptable to the agency to which application was made. Upon approval, the proposed price became the maximum sales price, and the regulation provided (Sec. (g) (1), *infra*, pp. 59-60) that that maximum price must be observed "so long as this regulation remains in effect." Changes in specifications could, however, be made if authorized (Sec. (e), *infra*, p. 59), and, at any time prior to the passing of title, an increase in the sales price could be requested of and approved by the Federal Housing Administration if the builder could show increased construction costs over which he had no control (Sec. (g) (7) *infra*, pp. 60-61).

On May 22, 1946, the Veterans' Emergency Housing Act of 1946 (the Patman Act) was ap-

[3] The builder was also required to agree to grant a preference in selling or renting the housing accommodations to veterans.

proved. That Act created the Office of the Housing Expediter and vested control of the Veterans' Housing Program in the Housing Expediter (*infra*, pp. 50-56); see generally, Rauh, *Government by Directive—A Case History* (1947) 61 Harv. L. Rev. 88. The plan of the program under that Act was a continuation of and remained substantially what it had been under the Civilian Production Administration. Section 4 of the Act (*infra*, p. 53) authorized the Housing Expediter, among other things, to "allocate, or establish priorities for the delivery of, such materials or facilities in such manner, upon such conditions, and to such extent as he deems necessary and appropriate in the public interest and to effectuate the purposes of this Act."[4] Section 3 (*infra*, p. 52), authorized him to set maximum sales prices for all houses completed after May 22, 1946. Section 1 (b) (*infra*, pp. 50-51) provided that the Act, and regulations and or-

[4] The priorities and allocations powers granted by Section 4 of the Veterans' Emergency Housing Act of 1946 were similar in character and extent, though limited to the field of housing, to the powers granted by Title III of the Second War Powers Act, which had previously been the foundation of the Veterans' Housing Program. Compare *infra*, p. 53 with *infra*, pp. 56-57.

Section 4 was inserted in the 1946 Act because of the apprehension that Title III of the Second War Powers Act, which was then scheduled to expire on June 30, 1946, might not be extended for the full term of the 1946 Act. Hearings before the Committee on Banking and Currency, H. of Reps., 79th Cong., 1st Sess., on H. R. 4761, at pp. 310, 314, 348, 428; Hearings before a Subcommittee of the Committee on Banking and Currency, U. S. Sen., 79th Cong., 2d Sess., on H.R. 4761, at p. 155; 92 Cong. Rec. 3327.

ders issued thereunder, were to terminate on December 31, 1947, or on the date fixed by concurrent resolution of both Houses of Congress, whichever date was the earlier. By Section 5 of the Act (*infra*, p. 54) it was made unlawful to sell or agree to sell a housing accommodation at a price in excess of that established by the Housing Expediter, or to violate the terms of any order or regulation issued under the Act. Section 5 (*infra*, p. 54) further provided that:

> Notwithstanding any termination of this Act as contemplated in section 1 (b) hereinabove, the provisions of this Act, and of all regulations and orders issued thereunder, shall be treated as remaining in force, as to rights or liabilities incurred or offenses committed prior to such termination date, for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

Section 7 (*infra*, pp. 54-56) contained various provisions for criminal and civil enforcement.

On August 27, 1946, the Housing Expediter first exercised the authority granted to him by Sections 4 (dealing with priorities and allocations) and 7 (dealing with enforcement) of the Veterans' Emergency Housing Act of 1946, and immediately delegated to the Civilian Production Administration his powers and authority under those sections of the Act (11 F.R. 9507).[5] The additional authority granted the Civilian

[5] At the same time he promulgated Housing Expediter Priorities Regulation No. 5 (11 F. R. 9508), in which he pro-

Production Administration was exercised the same day by an amendment of Schedule A to Priorities Regulation 33 (11 F.R. 9522).

After the assumption by the Housing Expediter of direct control of the program on August 27, 1946, all approved applications for construction authorization and priorities assistance were subject both to the Second War Powers Act and to the Veterans' Emergency Housing Act of 1946. Upon the expiration of Title III of the Second War Powers Act on March 31, 1947,[6] Priorities Regulation No. 33 was adopted as his own regulation by the Housing Expediter (12 F.R. 2111). It was revoked on December 31, 1947 (13 F.R. 6).

Section 1 (a) of the Housing and Rent Act of 1947 (61 Stat. 193, 50 U.S.C. App. (Supp. I), § 1881, which was approved and became effective on June 30, 1947, repealed Sections 1, 2(b) through 9, 11 and 12 of the Veterans' Emergency Housing Act of 1946, but provided (*infra*, p. 56):

> That any allocations made or committed, or priorities granted for the delivery, of any housing materials or facilities under any regulation or order issued under the authority

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vided that all future applications for construction authorization or priorities assistance would be made under it, rather than under Priorities Regulation No. 33, but that applications which theretofore had been made under Priorities Regulation No. 33 would continue to be processed under the latter regulation. Priorities Regulation No. 5 contains maximum price and construction requirement provisions which are comparable to those in Regulation No. 33, and priorities granted under the former also raise the issue presented in the instant case.

[6] By virtue of Section 3 of the First Decontrol Act of 1947, 61 Stat. 34.

contained in said Act, and before the date of enactment of this Act, with respect to veterans of World War II, their immediate families, and others, shall remain in full force and effect.

2. On August 21, 1946, respondents, doing business under the name Modern Building Company, applied to the Federal Housing Administration for construction authorization and priorities assistance, under Priorities Regulation No. 33, for the building of two single-family dwelling units at Derry, New Hampshire (R. 14-15). In accordance with Priorities Regulation No. 33, respondents filed, as part of their application, blueprints and outline specifications of the proposed buildings (R. 15) and a statement of the maximum price at which they proposed to sell the houses. On September 9, 1946, the Federal Housing Administration approved the application, thereby authorizing construction of the units. The ceiling price for each unit was $8,350 (R. 15). The project was assigned an HH priorities rating to enable the builders to obtain certain building materials specified in Schedule A to Priorities Regulation No. 33 (R. 15).

In building the houses, respondents used their priorities ratings to obtain at least some of the materials needed for construction (R. 22-28, 42-44). One of the houses, completed in August 1947, was sold in December 1947, for $12,000 (R. 15). The other, although not completed until January 1948, was sold in November 1947, for $12,800 (R. 15). Neither house was built entirely in accordance with

the specifications approved by the Federal Housing Administration (R. 15). Respondents had not requested nor been given permission to depart from the specifications or to sell at a price in excess of the ceiling (R. 22, 31), although a standard procedure existed, under Priorities Regulation No. 33, for processing requests for increases in maximum sales prices and for changes in the specifications (R. 21-22, 31; see *supra*, p. 4, *infra*, pp. 26 (fn. 14), 33, 44).

The United States brought suit, pursuant to Sections 7.(a) and (c) of the Veterans' Emergency Housing Act (*infra*, pp. 54-55), to compel respondents to make restitution, to the purchasers of the two houses, of the overcharges and the value of construction omissions. After trial, the District Court entered judgment for respondents (R. 13), holding that since the sales took place after the repeal of the Veterans' Emergency Housing Act by Section 1(a) of the Housing and Rent Act of 1947, they could not be violations of that Act or of Priorities Regulation No. 33. The Court of Appeals for the First Circuit affirmed (R. 54-59).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that maximum sales prices and construction requirements, established as a part and condition of the grant of priorities assistance and construction authorization under the Veterans' Emergency Housing Act of 1946, could not be en-

forced as to houses sold after the repeal, on June 30, 1947, of the Veterans' Emergency Housing Act of 1946, by the Housing and Rent Act of 1947.

2. In refusing to hold that Section 1(a) of the Housing and Rent Act of 1947 preserved the respondents' obligation to maintain the maximum prices on their houses sold in November and December 1947.

3. In refusing to hold that Section 109 of Title 1 of the U. S. Code preserved respondents' obligation to maintain the maximum prices on their houses sold in November and December 1947.

4. In affirming the judgment of the District Court which had given judgment for the respondents and against the United States.

SUMMARY OF ARGUMENT

I

Section 1(a) of the Housing and Rent Act of 1947, while repealing the Veterans' Emergency Housing Act of 1946, provided that "allocations made" or "priorities granted" under the authority of the latter Act should "remain in full force and effect." The court below held that, despite this proviso, maximum prices which the builders had agreed to maintain on houses built with the aid of construction authorization and priorities assistance under the Veterans' Emergency Housing Act could not be enforced if the houses were sold after June 30, 1947, the date of the repealing act. The court thought that only the builder's right to preference

in obtaining materials was preserved by Section 1(a). We submit that the opposite conclusion is required by the history of the Veterans' Housing Program and the language and legislative history of the 1947 statute, as well as by the history of subsequent amendments to that act in the light of the contemporaneous administrative interpretation.

A. Maximum sales prices, such as those binding respondents, were not established by the Housing Expediter under Section 3 of the 1946 Act—authorizing general price controls on all housing sales—but were used as a part of, and a condition to, the grant of priorities assistance and construction authorization under Section 4 of the Act, which gave the Expediter allocations-and-priorities powers comparable to those awarded the President by Title III of the Second War Powers Act (the general wartime priorities statute). Similar use of maximum sales prices on housing, as a means of conserving scarce materials, had previously been made under Title III. See *United States* v. *Elade Realty Corp.*, 157 F. 2d 979 (C.A. 2), certiorari denied, 329 U.S. 810. The Veterans' Housing Program—which first began early in 1946 under Title III, and then, after the passage of the Veterans' Emergency Housing Act in the Spring of 1946, was carried on under the authority of Section 4 of the latter Act—continued this practice of utilizing maximum prices as part of the grant of priorities assistance and of authority to construct.

depart from the specifications approved. Were this an ordinary contract there would be no question that the Government, having fully performed its part of the agreement, could force respondents to fulfil their obligations. Whether or not the relationship be characterized as contractual, it cannot be denied that respondents were under a *liability* to perform which but for the repealing Act would have been enforceable against them. Cf. *Herman* v. *Woods*, 175 F. 2d 781 (E. C. A.). This seems especially true when we examine the proviso to Section 5 of the Veterans Emergency Act which provided that notwithstanding any termination of the Act as contemplated in Section 1 (b) thereof all its provisions and those of any regulation issued thereunder should be treated as remaining in force "as to rights or liabilities incurred or offenses committed" thereunder. *Infra*, pp. 17–18.

The legislative history of the Housing and Rent Act of 1947 (repealing the Veterans Emergency Housing Act of 1946) contains only one reference to the problem involved here but it is significant that on that occasion the Chairman and one member of the House Committee considering the bill, and the Federal Housing Commissioner, all agreed that maximum prices on houses already in construction would be observed.[2] Moreover, the

[2] Hearings before the House Committee on Banking and Currency on H. R. 2549, 80th Cong., 1st Sess., p. 226. The

Housing Expediter, contemporaneously with the passage of the 1947 Act, and subsequently, interpreted the Act as preserving maximum sales prices on houses already in construction. As the official charged with administration of the housing program, his interpretation was entitled to great weight. *United States* v. *American Truck-*

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following colloquy took place between Chairman Wolcott, Congressman Monroney, and Mr. Raymond Foley, National Housing Administrator and Federal Housing Commissioner:

"Mr. MONRONEY. One other question. Mr. Chairman, do you consider that this bill will take the ceilings off HH houses?

"The CHAIRMAN. There is a provision in the bill which protects the commitments, already made, up to the effective date of the act. It would not affect any commitments made after that date.

"Mr. MONRONEY. *In other words, the ceilings on houses built with HH priorities would be left as it is now*, which gives you the right, Mr. Foley, to adjust those ceilings up for increased costs of construction where the builders make a case that their construction costs have increased; is that right?

"Mr. FOLEY. That has been our practice in the past, and as I understand, this refers to contracts entered into. I have assumed that that meant the agreement between the builder and the governmental agency that in return for priority aid certain rent ceilings would be applied, or certain sales ceilings would be applied.

"The CHAIRMAN. *I might say for the record now that it is intended to cover any agreement or any commitment made by anyone, which was made under the Patman Act* [the Veterans Emergency Housing Act of 1946].

"Mr. FOLEY. That would leave us then in the situation that you mention, Congressman Monroney.

"Mr. MONRONEY. Well, you would feel that it would be not good for the Government or the veteran to take ceilings off these HH houses, that were built with this priority aid, and on which an agreement had been made by the builder to

ing Associations, 310 U. S. 534. Nor was the Housing Expediter's interpretation of Section 1 (a) unknown to the Congress. On at least two separate occasions, in the hearings before the House Committee on Banking and Currency on the 1948 extension of rent controls,[3] and in the hearings before a subcommittee of the Senate Committee on Banking and Currency on the 1949 extension of rent control,[4] he advised the responsible bodies of Congress of that interpretation and it was not questioned. The failure to question his interpretation is especially significant in that Representative Wolcott, who had introduced the bill which, in part, eventually became Section 1 (a) of the 1947 Act, presided over the meeting of the House Committee at which the Housing Expediter stated his views. Although Congress

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sell at a ceiling price, as fixed by the Federal Housing Administration on adjustment; is that right?.

"Mr. FOLEY. Our position in maintaining that control, when the changes were made in the latter part of last year, was on that basis, that it was an agreement under which certain benefits were supposed to flow both ways and should be maintained." [Italics added.]

H. R. 2549, introduced by Mr. Wolcott, contained language substantially identical to Section 1 (a) of the Housing and Rent Act of 1947. H. R. 3203, which became the Housing and Rent Act of 1947, was later substituted for H. R. 2549.

[3] Hearings before the House Committee on Banking and Currency, "1948 Extension of Rent Controls," 80th Cong., 2d Sess., pp. 23–24.

[4] Hearings before a Subcommittee of the Senate Banking and Currency Committee on Bills Pertaining to the Extension of Rent Control, 80th Cong., 2d Sess., p. 537.

has subsequently drastically amended other Sections of the 1947 Act, it has retained Section 1 (a) unchanged to date.

We believe, in short, that the language of the 1947 Act and all aids to its construction point directly to a different conclusion from that reached by the court below. It may be, as the court below seemed to feel, that the interpretation we urge would be inequitable to some people whose building costs were high, if they could not secure other relief. The short answer is that such relief was available; there was open to the builder, at any time prior to passing of title, a means by which his sales price could have been increased on a showing of increased costs. *Supra,* p. 4. In any event, the interpretation of the court below cuts off relief from hundreds of veterans who paid over-ceiling prices without receiving concomitant increases in value.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

MARCH 1951.

APPENDIX

1. The pertinent portions of the Veterans Emergency Housing Act of 1946 (60 Stat. 207, 50 U. S. C. App. § 1821 *et seq.*) provide as follows:

* * * * *

Section 1 (b):

The provisions of this Act, and all regulations and orders issued thereunder, shall terminate on December 31, 1947, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the provisions of the Act are no longer necessary to deal with the existing national emergency, whichever date is the earlier.

* * * * *

Section 2 (b):

The Housing Expediter, in addition to such other functions and powers as may be delegated to him by the President, is authorized to—

(1) formulate such plans and programs as are necessary to provide for an increased supply of housing accommodations of all kinds and, in particular, of homes available for sale or rental at moderate prices to veterans of World War II and their immediate families;

(2) issue such orders, regulations, or directives to other executive agencies (including the Office of Economic Stabilization and the Office of Price Administration) as may be necessary to provide for

the exercise of their powers in a manner required by or consistent with the execution of the aforesaid plans and programs, and to coordinate the activities of such agencies directed to the execution of such plans and programs. Each executive agency shall carry out without delay the orders, regulations, or directives of the Housing Expediter, and shall, to the extent necessary, modify its operations and procedures from time to time to conform to the directions of the Housing Expediter;

(3) recommend to the President the enactment of such legislation as may be necessary to provide the authority to carry out such plans and programs as are not authorized under existing law;

(4) consult and cooperate with other agencies of the Federal Government, State and local governments, industries, labor, and other groups, both national and local, with respect to the problems created by the housing emergency and the steps which can be taken to remedy it.

* * * * *

Section 3 (a):

Whenever in the judgment of the Expediter the sales prices of housing accommodations the construction of which is completed after the effective date of this Act have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act, he may by regulation or order establish maximum sales prices for such housing accommodations in accordance with the provisions of this Act. * * *

Section 3 (b):

Any regulation or order issued under the authority of this section with respect to

housing accommodations the construction of which is completed after the effective date of this Act shall provide that no sale of any such housing accommodations shall take place until after the builder thereof has filed with the appropriate agency designated by the Expediter a description of such accommodations, including a statement of the proposed maximum sales price, and has received from such agency a certification that such price is reasonably related to the value of the accommodations to be sold, taking into consideration (1) reasonable construction costs not in excess of the legal maximum prices of the materials and services required for the construction, (2) the fair market value of the land (immediately prior to construction) and improvements sold with the housing accommodations, and (3) a margin of profit reflecting the generally prevailing profit margin upon comparable units during the calendar year 1941. Any prospective seller of such housing accommodations may apply for such certification at any time, including before the commencement of construction, during its progress, or after its completion. In any case where a certification of approval of a proposed maximum sales price has been issued prior to the completion of construction, the prospective seller may, at any time before the first sale, apply for such revision of the maximum sales price previously certified as may be justified by a showing of special circumstances arising during the course of construction and not reasonably to have been anticipated at the time of the issuance of the earlier certification. The first sale of housing accommodations the construction of which

is completed after the effective date of this Act shall not be made at a price in excess of the maximum sales price certified under this subsection. The actual price at which any such housing accommodations is first sold, plus any increases authorized pursuant to subsection (c), shall be the maximum sales price for any subsequent sale of such housing accommodations

* * * * *

Section 4 (a):

Whenever in the judgment of the Expediter there is a shortage in the supply of any materials or of any facilities suitable for the construction and/or completion of housing accommodations in rural and urban areas, and for the construction and repair of essential farm buildings, he may by regulation or order allocate, or establish priorities for the delivery of, such materials or facilities in such manner, upon such conditions, and to such extent as he deems necessary and appropriate in the public interest and to effectuate the purposes of this Act.

* * * * *

Section 5:

It shall be unlawful for any person to effect, either as principal or broker, a sale of any housing accommodations at a price in excess of the maximum sales price applicable to such sale under the provisions of this Act, or to solicit or attempt, offer, or agree to make any such sale. It shall be unlawful for any person to violate the terms of any regulation or order issued under the provisions of this Act. Notwithstanding any termination of this Act as contemplated in section 1 (b) hereinabove, the provisions of this Act, and of all regu-

lations and orders issued thereunder, shall be treated as remaining in force, as to rights or liabilities incurred or offenses committed prior to such termination date, for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

* * * * *

Section 7 (a):

Whenever in the judgment of the Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 5 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Expediter that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order, may be granted and if granted shall be granted without bond.

* * * * *

Section 7 (c):

The district courts shall have jurisdiction of criminal proceedings for violations of section 5 of this Act, and, concurrently with State and Territorial courts, of all other proceedings under this section. Such criminal proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred. Such other proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred, and may also be brought in the district in which the defendant resides or transacts business, and process in such cases

may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found. Any such court shall advance on the docket and expedite the disposition of any criminal or other proceedings brought before it under this section. No costs shall be assessed against the Expediter or the United States Government in any proceeding under this Act.

* * * * *

2. Section 1 (a) of the Housing and Rent Act of 1947 (61 Stat. 193, 50 U. S. C. App. (Supp. I) § 1881) provides as follows:

Section 1 (a):

Sections 1, 2 (b) through 9, and sections 11 and 12, of Public Law 388, Seventy-ninth Congress, are hereby repealed, and any funds made available under said sections of said Act not expended or committed prior to the enactment of this Act are hereby returned to the Treasury: *Provided,* That any allocations made or committed, or priorities granted for the delivery, or any housing materials or facilities under any regulation or order issued under the authority contained in said Act, and before the date of enactment of this Act, with respect to veterans of World War II, their immediate families, and others, shall remain in full force and effect.

* * * * *

3. The Act of March 22, 1944 (58 Stat. 118, 1 U. S. C. (Supp. I) § 109) provides as follows:

The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall

so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

4. Priorities Regulation No. 33 of the Civilian Production Administration (11 F. R. 6598) provides, in relevant part, as follows:

* * * * *

§ 944.54 (e)

Construction of the project. A builder who constructs, converts, alters or repairs housing accommodations under this regulation must do the work in accordance with the description given in the application, except where he has obtained written approval for a change from the agency which approved the original application.

* * * * *

§ 944.54 (g)

Maximum sales prices and rents—(1) *General.* The restrictions on sales prices and rents contained in this paragraph (g) must be observed so long as this regulation remains in effect. They apply to dwellings of the kinds described below when built or converted under this regulation. Approval of a proposed sales price or rent should be considered merely as a limit upon the

price or rent to be charged. It should not be considered as a statement that the sales price or rent represents the value of the dwelling or the apartment for other purposes. In the case of remodelling or rehabilitation, the Office of Price Administration may reduce the maximum rent specified in the application, unless prior approval of the rent has been obtained from that agency.

* * * * *

§ 944.54 (g) (2) (ii)

A builder must not sell a one-family dwelling built or converted under this regulation, including the land and all improvements (including garage if provided), for more than the maximum sales price specified in the application, as approved, including within this sales price the amount of any brokerage fees or commissions paid in connection with the sale, whether paid by the builder or by the purchaser.

* * * * *

§ 944.54 (g) (7)

Requests for increases in sales prices and rents by builders. A builder may apply to the Federal Housing Administration for an increase in the sales price or rent specified in the application before the house is sold (i. e. before title has passed) or initially rented. The application will not be approved unless he can show that he has incurred or will incur additional or increased costs in the construction over which he had, or has, no control, or if he can show that he will incur additional or increased costs in the operation of rented accommodations over which he has no control, and that these increased or additional costs will make it impracticable for him to

sell or rent at the price or rent specified in the application. No increase in sales price or rent will be granted in excess of the increase in construction cost, or a proper proportion of it, or the increase in operating cost, as the case may be. However, no increase in sales price to an amount more than $10,000 (or $17,000 in the case of a two-family dwelling) will be granted and no increase in shelter rent to more than $80 a month will be granted except on appeal where unusual hardship would result.

* * * * *

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